

EXHIBIT A-6

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,
Plaintiffs,
vs. No. 18 Civ. 2949 (ARR) (RER)
XOOM ENERGY, LLC and XOOM ENERGY
NEW YORK, LLC,
Defendants.

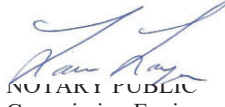
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VIDEOTAPED DEPOSITION OF
SEABRON ADAMSON
Tuesday, November 8, 2022
10:06 a.m.
Veritext
101 Arch Street
Boston, Massachusetts 02110

Laurie K. Langer, RPR

<p>1 analysis a little bit. You don't believe that the</p> <p>2 correlation analysis in Mr. Coleman's initial report or</p> <p>3 his rebuttal report is a relevant measure of whether or</p> <p>4 not XOOM's rates were based on its actual and estimated</p> <p>5 supply costs. Is that fair to say?</p> <p>6 A. Yeah, it's an insufficient metric.</p> <p>7 Q. Okay.</p> <p>8 A. That's what I characterized it.</p> <p>9 Q. And you described earlier your opinion that even</p> <p>10 if supply costs and rates were perfectly correlated,</p> <p>11 that would still, in your view, be insufficient to show</p> <p>12 that XOOM's rates were based on its actual and estimated</p> <p>13 supply costs; right?</p> <p>14 A. Right. And we used the example.</p> <p>15 Q. Got it. Aside from disagreeing with Mr. Coleman</p> <p>16 that correlation is some relevant measure, you don't</p> <p>17 think that his correlation analysis contains any</p> <p>18 mathematical errors; right?</p> <p>19 A. I haven't redone his correlation analysis.</p> <p>20 Q. Have you done your own correlation analysis of</p> <p>21 XOOM's rates and costs?</p> <p>22 A. I mean, as we said, our methodology doesn't rely</p> <p>23 on correlation. So the Method 1 here and 2 and</p> <p>24 everything doesn't look at that.</p> <p style="text-align: right;">Page 106</p>	<p>1 issue I, maybe I would run it. But I haven't -- I don't</p> <p>2 have any intentions sitting here today to do so.</p> <p>3 Q. Got it. And the initial report, which is</p> <p>4 Exhibit 3, was produced on October 31st; right?</p> <p>5 A. Yes. Something like that.</p> <p>6 Q. I'm sorry. It was amended on October 31st.</p> <p>7 A. Yeah.</p> <p>8 Q. It was originally produced --</p> <p>9 A. Earlier than that.</p> <p>10 Q. -- earlier.</p> <p>11 A. I don't remember the date. Sorry.</p> <p>12 Q. That's okay. My point being just, you've had a</p> <p>13 chance to look at it, you just don't think it's relevant</p> <p>14 to do a correlation analysis?</p> <p>15 A. That's the main driver, yes.</p> <p>16 Q. Okay. As to your overcharge calculations as</p> <p>17 you've characterized them in Model 1 and Model 2,</p> <p>18 what -- what specialized knowledge or skill did you use</p> <p>19 to render opinions on what you call overcharges?</p> <p>20 A. Well, experience in the electricity industry and</p> <p>21 the gas industry. Economics, finance. And then what I</p> <p>22 would consider kind of just data analytics of</p> <p>23 assembling, assembling models, including damages models.</p> <p>24 Q. Got it. The math -- the data analytics may have</p> <p style="text-align: right;">Page 108</p>
<p>1 Q. Right. But my question is different. Have you</p> <p>2 done a correlation analysis of --</p> <p>3 A. No.</p> <p>4 Q. -- XOOM's rate?</p> <p>5 A. No. Not -- nothing like - no. I mean, obviously</p> <p>6 we, you know, you can look at the graphs and stuff, but</p> <p>7 I haven't calculated correlation coefficients or</p> <p>8 anything like what he did.</p> <p>9 Q. You don't disagree that the rates and costs are</p> <p>10 positively correlated as stated in his report?</p> <p>11 A. I'm trusting his analysis that he finds non zero</p> <p>12 correlation coefficients.</p> <p>13 Q. As far as you know he did the math correctly?</p> <p>14 A. As far as I know. Again, I haven't checked his</p> <p>15 math, but he seems to know his math.</p> <p>16 Q. Okay. Got it. Do you intend to check it later</p> <p>17 and offer a new opinion about that?</p> <p>18 A. If in looking through it we were to identify</p> <p>19 specific issues that relied upon it, I mean, I</p> <p>20 haven't -- I didn't focus on that because I didn't find</p> <p>21 it to be an appropriate or sufficient metric, so it</p> <p>22 didn't, from my perspective, I just sort of assumed it</p> <p>23 was correct. It's just not really answering the</p> <p>24 question. If I found that there was some potential</p> <p style="text-align: right;">Page 107</p>	<p>1 been time consuming; right? But the math itself is</p> <p>2 pretty straightforward; right?</p> <p>3 A. Yes.</p> <p>4 Q. You've got addition, multiplication, and</p> <p>5 subtraction; right?</p> <p>6 A. Broadly, yes.</p> <p>7 Q. Okay. There wasn't any additional scientific</p> <p>8 method --</p> <p>9 A. No.</p> <p>10 Q. -- or technical analysis involved?</p> <p>11 A. We did not -- it did not require a -- it</p> <p>12 did -- that model did not require a very complicated</p> <p>13 mathematical model.</p> <p>14 Q. Okay. How long, Mr. Adamson, have you been</p> <p>15 testifying as an expert witness?</p> <p>16 A. From the very first time that I did it? Because</p> <p>17 it certainly hasn't been continuous. I think the first</p> <p>18 case I ever testified in was a Massachusetts regulatory</p> <p>19 case on behalf of the Massachusetts Attorney General's</p> <p>20 Office 20 something years ago.</p> <p>21 Q. Okay. And the last time that we met you told me</p> <p>22 about half your work was expert witness work, is</p> <p>23 that -- do you recall telling me that or is that</p> <p>24 currently accurate?</p> <p style="text-align: right;">Page 109</p>

<p>1 historical numbers; correct?</p> <p>2 I mean, I interpreted his as being a summary of</p> <p>3 historical data.</p> <p>4 Q. I'm not sure, why are you referring to Yahoo?</p> <p>5 A. In Footnote 28.</p> <p>6 Q. I see. From finance.yahoo.com?</p> <p>7 A. Yahoo.com is the website.</p> <p>8 Q. Yep.</p> <p>9 A. So I -- I interpreted this and, as a, a chart of</p> <p>10 historical data for these other companies.</p> <p>11 Q. Right. But the --</p> <p>12 A. I mean, that's how I interpreted it. I hope I'm</p> <p>13 right.</p> <p>14 Q. Yeah, you're right.</p> <p>15 The gross -- the reported gross margins for these</p> <p>16 companies that are part of the Dow Jones Industrial</p> <p>17 Average; right?</p> <p>18 MR. WITTELS: Objection.</p> <p>19 A. That's what I took this data to be, as reported</p> <p>20 historical data, yes.</p> <p>21 Q. Okay. And my question is which of these gross</p> <p>22 margins, if any, do you believe are unreasonable?</p> <p>23 MR. WITTELS: Objection.</p> <p>24 A. I didn't -- I haven't expressed any opinion on</p> <p style="text-align: right;">Page 122</p>	<p>1 Q. And I guess that's sort of what I'm getting at, I</p> <p>2 think. I think maybe we're saying the same thing.</p> <p>3 You're not offering an opinion that no company</p> <p>4 should charge more than a 50 percent gross margin ever?</p> <p>5 A. Right.</p> <p>6 Q. You're not offering that sort of opinion; right?</p> <p>7 MR. WITTELS: Wait. Objection. You made a</p> <p>8 statement, now you have a question. Objection to the</p> <p>9 form.</p> <p>10 I don't know if you can answer that.</p> <p>11 You made a statement.</p> <p>12 A. It's -- is your question -- say -- say your</p> <p>13 question again, please.</p> <p>14 Q. You're not offering an opinion that it is per se</p> <p>15 unreasonable, no matter the industry, for a company to</p> <p>16 charge more than a 50 percent gross margin?</p> <p>17 MR. WITTELS: Objection.</p> <p>18 A. I have not -- I have not expressed that opinion,</p> <p>19 no.</p> <p>20 Q. And you're not -- and level aside, you're not</p> <p>21 expressing any opinion that, no matter what, it is</p> <p>22 always in all circumstances unreasonable for any company</p> <p>23 to charge a gross margin of a particular number; right?</p> <p>24 MR. WITTELS: Objection.</p> <p style="text-align: right;">Page 124</p>
<p>1 that. I haven't looked at any of these companies and I</p> <p>2 did -- this is -- they would have to account for what</p> <p>3 those businesses are and what, like, contracts they</p> <p>4 have, or sign. I mean, these are -- I guess, Chevron is</p> <p>5 at least an energy company. I mean, most of these are</p> <p>6 software companies, or J&J, or Salesforce. I mean,</p> <p>7 they're completely different businesses. I don't -- I'm</p> <p>8 not quite sure I understand the relevance, but. I never</p> <p>9 expressed any opinion about these data, which I assume</p> <p>10 he has historical data.</p> <p>11 Q. And I guess is your answer it depends on the</p> <p>12 business and the contracts whether or not a margin is</p> <p>13 reasonable?</p> <p>14 A. To what extent the -- if there is to be a margin</p> <p>15 is the margin charged under a contract would have to</p> <p>16 refer to the contract. I take these to be gross margins</p> <p>17 reported for generally very large corporations which are</p> <p>18 mixtures of businesses, contracts, in entirely different</p> <p>19 business.</p> <p>20 So, for example, Amgen, which I believe is a</p> <p>21 biotech company, without knowing a huge amount about it.</p> <p>22 I mean, that's a very different industry with huge R&D</p> <p>23 costs. Clearly the, the margins for an R&D oriented</p> <p>24 company are going to be very different than for an ESCO.</p> <p style="text-align: right;">Page 123</p>	<p>1 A. I -- I have not offered that opinion. That</p> <p>2 doesn't make much sense to me.</p> <p>3 Q. Right. It would depend on the industry for one;</p> <p>4 right?</p> <p>5 A. For one thing, yeah.</p> <p>6 Q. Okay. And it would depend on contract terms or</p> <p>7 representations to customers?</p> <p>8 A. It could, yes.</p> <p>9 Q. It could depend on other things as well; right?</p> <p>10 MR. WITTELS: Objection.</p> <p>11 A. Sure. The market timing, various things. I</p> <p>12 mean, everything I've said in this has been in relation</p> <p>13 to these specific contracts.</p> <p>14 Q. Got it.</p> <p>15 A. And I don't -- as far as I know companies like</p> <p>16 Amgen don't have these contracts, so comparison seems a</p> <p>17 little off. I just don't what it -- I don't know</p> <p>18 exactly what it proves, but I don't disagree with his</p> <p>19 data.</p> <p>20 Q. Fair enough. The contract doesn't say anything</p> <p>21 about capping margin; right?</p> <p>22 A. It doesn't use -- it doesn't use the word</p> <p>23 "margin" at all.</p> <p>24 Q. Right. Okay. So whether a -- well, let's see.</p> <p style="text-align: right;">Page 125</p>

<p>1 their retail business.</p> <p>2 Q. Okay. Well, I guess --</p> <p>3 A. For example, a bunch of the Texas companies have</p> <p>4 retail supply businesses. We did a little bit on that,</p> <p>5 but not a major thing. But a bunch of the Texas</p> <p>6 companies had retail supply businesses that also had</p> <p>7 substantial other businesses.</p> <p>8 Q. I think I understand what you're saying. And you</p> <p>9 didn't work for the retail side of their businesses, you</p> <p>10 worked for the other side of their businesses?</p> <p>11 A. Or sometimes we would be hired on some kind of</p> <p>12 corporate strategy type engagement, which might be</p> <p>13 pretty broad.</p> <p>14 Q. Got it. Okay. I thank you for your time and</p> <p>15 your patience with me.</p> <p>16 MR. MATTHEWS: I'll pass the witness.</p> <p>17 A. Thank you.</p> <p>18 Q. Yes, sir.</p> <p>19</p> <p>20 EXAMINATION</p> <p>21</p> <p>22 BY MR. WITTELS:</p> <p>23 Q. Mr. Adamson, I just really have one question for</p> <p>24 you. You were asked by counsel for XOOM about whether</p> <p style="text-align: right;">Page 138</p>	<p>1 XOOM or some broad question.</p> <p>2 Q. And the answer was?</p> <p>3 A. I believe he said yes, they were, they were both</p> <p>4 profitable. Both fixed rate and variable rate were</p> <p>5 profitable.</p> <p>6 Q. Okay. I have no further questions at this time.</p> <p>7 Thanks.</p> <p>8 MR. MATTHEWS: Thanks very much.</p> <p>9 A. Thank you.</p> <p>10 VIDEOGRAPHER: The time is 2:39, we are off</p> <p>11 the record.</p> <p>12 COURT REPORTER: And, Mr. Matthews, your</p> <p>13 order?</p> <p>14 MR. MATTHEWS: My order is an expedited</p> <p>15 transcript, just, I don't need any print copies.</p> <p>16 Electronic only. PDF exhibits.</p> <p>17 COURT REPORTER: Expedite by Friday?</p> <p>18 MR. MATTHEWS: Yes.</p> <p>19 (Whereupon, the deposition concluded at</p> <p>20 approximately 2:39 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: right;">Page 140</p>
<p>1 the company was able to make any profits on its fixed</p> <p>2 rate customers; do you remember that question?</p> <p>3 A. Yeah. Not in exact wording, but I remember the</p> <p>4 question.</p> <p>5 Q. Yeah. And did you ask me to, whether you could</p> <p>6 go back and review your report when we had a break?</p> <p>7 A. Yeah, well -- yes, we were discussing the report.</p> <p>8 Q. And did you reread paragraph 57?</p> <p>9 A. Yes.</p> <p>10 Q. And does that answer the question of whether XOOM</p> <p>11 made money and was profitable on its fixed rate</p> <p>12 customers?</p> <p>13 MR. MATTHEWS: Objection. Leading.</p> <p>14 A. Well, I just -- it just reminded me there was</p> <p>15 a -- I had said that there was not a specific P&L, this</p> <p>16 was a reference in the report to deposition testimony</p> <p>17 from a XOOM witness about the profitability of this.</p> <p>18 Q. And what did your report find and state?</p> <p>19 A. I don't remember exactly how he worded it. I</p> <p>20 think there had been a, in the deposition there was a</p> <p>21 question about, it was around, I don't have the</p> <p>22 transcript in front of me, of course, of the deposition,</p> <p>23 but it was something around the line of were -- were a</p> <p>24 fixed rate -- were fixed rate customers profitable for</p> <p style="text-align: right;">Page 139</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3 COMMONWEALTH OF MASSACHUSETTS</p> <p>4 SUFFOLK, ss.</p> <p>5</p> <p>6 I, Laurie Langer, Registered Professional Reporter</p> <p>7 and Notary Public in and for the Commonwealth of</p> <p>8 Massachusetts, do hereby certify that the witness whose</p> <p>9 deposition is hereinbefore set forth, was duly sworn by</p> <p>10 me and that such deposition is a true record of the</p> <p>11 testimony given by the witness.</p> <p>12</p> <p>13 I further certify that I am neither related to or</p> <p>14 employed by any of the parties in or counsel to this</p> <p>15 action, nor am I financially interested in the outcome</p> <p>16 of this action.</p> <p>17</p> <p>18 In witness whereof, I have hereunto set my hand and</p> <p>19 seal this 11th day of November, 2022.</p> <p>20</p> <p>21 </p> <p>22 NOTARY PUBLIC</p> <p>23 Commission Expires</p> <p>24 7/27/2023</p> <p style="text-align: right;">Page 141</p>